

MAR 23 2018

# Law Office of Jack Silver

708 Gravenstein Hwy. North, # 407 Sebastopol, CA 95472-2808  
Phone 707-528-8175 Email: JSilverEnvironmental@gmail.com



**Via Certified Mail –  
Return Receipt Requested**

March 16, 2018

Members of the Board of Directors  
Head of Agency  
Tuolumne Utilities District  
18885 Nugget Boulevard  
Sonora, CA 95370

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution  
Control Act (Clean Water Act)**

Dear Members of the Board and Head of Agency:

## **STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch (“River Watch”) with regard to violations of the Clean Water Act (“CWA” or “Act”; 33 U.S.C. § 1251 et seq.) that River Watch alleges are occurring through the ownership and/or operation of the Tuolumne Utilities District sewage treatment, collection and reclamation system.

River Watch hereby places Tuolumne Utilities District (the “District”) as owner and operator of its sewage treatment, collection and reclamation system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Central Valley Region, Water Quality Control Plan (“Basin Plan”) as the result of alleged unlawful discharges of sewage from the District’s sewer and reclamation pipelines to a water of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System (“NPDES”) permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch contends the District violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (see 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the District's operations in the region at issue in this Notice is the Regional Water Quality Control Board, Central Valley Region ("RWQCB").

The District's operations were formerly regulated under ORDER NO. R5-2008-0162, NPDES PERMIT NO. CA0084727, which was rescinded by ORDER R5-2014-0008, adopted by the RWQCB on February 6, 2014. Therefore, the District currently has no NPDES Permit authorizing the discharge of pollutants to waters of the United States.

Currently, the District's sole method of disposal is reuse for irrigation of agricultural lands, regulated by Waste Discharge Requirements and Master Reclamation Permit Order R5-2002-0202.

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (see CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with the CWA.

## NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specified standard, limitation, or order alleged to have been violated.

River Watch has identified discharges of sewage from the District's sewage collection system and reclamation system to waters of the United States, without an NPDES permit in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

2. The Activity Alleged to Constitute a Violation.

River Watch contends that from March 1, 2013 to March 1, 2018, the District has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

#### A. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

Sanitary Sewer Overflows (“SSOs”) whereby untreated sewage is discharged above ground from the collection system prior to reaching the Sonora Regional Wastewater Treatment Plant (the “Plant”) are alleged to have occurred both on the dates identified in the CIWQS Interactive Public SSO Reports and on the dates when no reports were filed with CIWQS by the District, all in violation of the CWA. The CIWQS “Spill Public Report – Summary Page identifies 173 “Total Number of SSO locations,” with 189,451 “Total Vol of SSOs (gal)”, of which the District reports that 24,308 gallons were recovered while 110,002 gallons reached a surface water.

##### A.1. Discharges to Surface Waters.

As recorded in CIWQS Public SSO Reports, the District’s collection system has experienced at least 33 SSOs between January 1, 2013 and January 1, 2018, with a combined volume of at least 2,629 gallons – 55 gallons of which were reported as having reached surface waters. However, a review of the record indicates the District’s SSO Reports to be remarkably lacking in required detailed information; and, what little information was provided raised serious doubts regarding the reliability of volume estimates and the reported final destination of the spills.

For example, a Spill Report dated October 5, 2018, Event ID number 843571, reported a total spill volume of 60 gallons to land, total volume recovered as 60 gallons, and 0 gallons discharged to a surface water or a drainage channel. For “Estimated spill start date/time” the Report indicated 2017 – 12-23 10:00:00.0, “Date and time sanitary sewer system agency was notified of or discovered spill” - 2017-12-23 16:00:00.0, “Estimated Operator arrival date/time” - no entry, “Estimated spill end date/time” - no entry. Thus, based on the above information, the spill lasted at least 6 hours from the estimated start time to the time the agency was notified, and probably longer, but it is impossible to determine this without an end time. Sixty gallons is a low volume for a 6-hour spill, and impossible to confirm without any information regarding the flow rate. “Spill cause” and “Spill cause explanation” items were also left blank in this Report.

The above example of incomplete and questionable reporting is typical of many of the District’s Spill Reports which also lack any information regarding “Explanation of volume estimation method used”. Another example is a Spill Report dated January 9, 2014, Event ID 802582, with an estimated total spill volume of 5 gallons to land, 1 gallon recovered, and no discharge to a surface water. The start time was reported as 2014-01-06 12:00:00.0, time the agency was notified as 2014-01-07 14:30:00.0. Again, no information is provided regarding the end time of the spill or an explanation of the method used to estimate volume. Both of these cited Spill Reports listed the point of failure as a gravity mainline which makes the low volume estimates especially lacking in credibility as compared to a spill from a private lateral.

River Watch’s expert believes that many of the SSOs reported by the District as having been contained without reaching a surface water did in fact discharge to surface waters, and those reported as partially reaching a surface water did so in greater volume than stated. River Watch alleges that the District is systematically under-reporting the volume of SSOs from its sewage collection system, and failing to report spills which in fact reached a drainage to a surface water or discharged directly

to a surface water.

#### A.2 Mitigating Impacts.

River Watch contends the District fails to adequately mitigate the impacts of SSOs. The District is subject to the requirements of the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the Impacts of an SSO. The EPA's "Report to Congress on the Impacts of SSOs" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. The Statewide WDR requires the District to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and impact of the release. As the District is severely underestimating SSOs which reach surface waters, River Watch contends the District is sampling very few violations of their reported SSOs.

The RWQCB adopted a Water Quality Control Plan, Fourth Edition (Revised August 2006), for the Sacramento and San Joaquin River Basins (Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the Basin Plan. The Basin Plan at page II-2.00 states, "...beneficial uses of any specifically identified water body generally apply to its tributary streams." The Basin Plan does not specifically identify beneficial uses for Woods Creek, but does identify present and potential uses for Tuolumne River to which Woods Creek, via New Don Pedro Reservoir, is tributary. These beneficial uses are: municipal and domestic supply, agricultural supply, including stock watering, hydropower generation, water contact recreation, including canoeing and rafting, non-contact water recreation, including aesthetic enjoyment, commercial and sport fishing, aquaculture, warm freshwater habitat, cold freshwater habitat, and wildlife habitat.

In addition, the Basin Plan implements SWRCB Resolution No. 88-63 which established state policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply.

There is no record of the District performing any analysis of the impact of SSOs on aquatic or wildlife habitat, nor any evaluation of the measures needed to restore water bodies designated as habitat from the impacts of SSOs.

#### B. Discharge to Surface Waters Via Underground Leakage (Exfiltration)

The District's reported history of multiple surface overflows is a clear indication of widespread structural defects in its sewage collection system. Defects including cracked or eroded pipes, misaligned joints and blockages result in inflow and infiltration ("I/I") of rain water and



ground water causing surface overflows. In addition to surface overflows which discharge overland into surface waters, these structural defects result in underground leakages or exfiltration. It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system result in discharges to adjacent surface waters via underground hydrological connections.

River Watch contends untreated sewage is discharged from cracks, displaced joints eroded segments, etc., in the District's collection system into groundwater hydrologically connected to surface waters including, but not limited to, Woods Creek. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the District's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The district's chronic collection system failures pose a substantial threat to public health.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the District's sewage collection system which reaches a surface water is a discharge of a pollutant to a surface water without a NPDES permit, and therefore a violation of the CWA. During the course of discovery River Watch will test surface waters adjacent to sections of the District's collection system to determine the location and extent of exfiltration.

The results of studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, verify contamination of the adjacent water with untreated sewage. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the District's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens.

C. Discharges To Surface Waters From the District's Reclamation Transport Line

The transport of the District's effluent from the Plant is accomplished by a gravity flow line that exits from the Plant's chlorination facility. This line transports reclaimed water to Quartz Reservoir. Prior to delivery to Quartz Reservoir, the line supplies a number of end-users by means of turnouts along the line. The District, in the operation of its reclamation transport line, has a history of unpermitted discharges, including discharge of wastewater into surface water drainage courses, discharge of wastewater onto unpermitted lands, and discharge onto roadways accessible to the public. Solids removal blowoffs exist at numerous locations along the transmission and distribution lines which have been sources of unauthorized discharges to surface water bodies, drainages, or to unpermitted discharge areas. There are records of runoff and/or over-spray at the end-use land application areas. River Watch alleges that these violations are ongoing, occurring whenever irrigation exceeds the capacity of the irrigated lands to absorb the volume of the District's reclamation water applied to the end-use sites.

River Watch is understandably concerned regarding the effects of both surface and underground SSOs on habitat, sources of municipal water use, and contact recreation in and around the diverse and sensitive ecosystem of the area served by the District. All of these discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), in that they are discharges of a pollutant (sewage) from a point source (the District's sewage collection system, reclamation transport line, or irrigation sites) to a water of the United States without complying with any other sections of the Act. River Watch further contends these violations are continuing in nature or have a likelihood of occurring in the future.

In practice, the addition of any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited. Also, any SSO resulting in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code §13050(m) is prohibited (including SSOs whether or not they reach a surface water). California Water Code §13050(m) defines nuisance to mean "anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes."

3. The Person or Persons Responsible for the Alleged Violation.

The entity responsible for the alleged violations identified in this Notice is Tuolumne Utilities District and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation.

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the District which relate to its sewage collection system as further described in this Notice.

5. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is March 1, 2013 through March 1, 2018. River Watch may from time to time update this Notice to include all violations of the CWA by the District which occur during and after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in

Northern California with a mailing address of 290 S. Main Street, #817, Sebastopol, California. River Watch may be contacted via email at [US@ncriverwatch.org](mailto:US@ncriverwatch.org). River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwater of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications with respect to this Notice should be directed to counsel identified below:

Jack Silver, Esq.  
Email: [jsilverenvironmental@gmail.com](mailto:jsilverenvironmental@gmail.com)  
Law Office of Jack Silver  
Jerry Bernhaut, Esq.  
Email: [j3bernhaut@gmail.com](mailto:j3bernhaut@gmail.com)  
708 Gravenstein Hwy. No. # 407  
Sebastopol, CA 95472  
Jack Silver: Tel. (707) 528-8175  
Jerry Bernhaut: Tel. (707) 595-1852

## **RECOMMENDED REMEDIAL MEASURES**

River Watch looks forward to meeting with the District's staff to tailor remedial measures to the specific operation of the Plant and sewer collection system. In advance of that conversation, River Watch identifies the following issues for discussion that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

1. Determining the specific sewer collection system repairs required, and establishing deadlines for compliance.
2. Requiring implementation of an effective SSO reporting and response program.
3. Providing a lateral inspection and repair program.
4. Keeping the Sewer System Management Plan (SSMP) up-to-date and properly certified.
5. Performance of weekly inspection of the application of irrigation water from the District's reclamation system to end user sites during the reclamation season.
6. Promoting staff training and education.

## **CONCLUSION**

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who may reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, fishing, horseback riding, hiking, photography, nature walks, and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the District's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$53,484.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law

The CWA specifically provides a **60-day** “notice period” to promote resolution of disputes. River Watch encourages the District to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen’s suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

  
Jack Silver

JS



### **Service List**

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N. W.  
Washington, D.C. 20460

✓ Alexis Strauss, Acting Regional Administrator  
U.S. Environmental Protection Agency  
Pacific Southwest, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100